

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y.  
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DAVID SOLOMON,

BROOKLYN OFFICE

Plaintiff,

V.

Docket No. : 18-cv-5528(ERK)(PK)

AMAZON.COM, INC. et al,

Defendants.

May 18, 2020

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AFFIDAVIT IN SUPPORT OF REQUEST FOR COURT TO REFER  
AMAZON AND AMAZON HEAD LAWYER JAY WARREN FOR FELONY  
PROSECUTION FOR VIOLATION OF FEDERAL AND STATE EVIDENCE  
TAMPERING STATUTES 18 USC 1519 AND NEW YORK STATE PENAL  
LAW SECTION 215.40; AND IN SUPPORT OF RENEWED REQUEST TO  
COMPEL INFORMATION NEEDED TO SERVE AND DEPOSE TWO  
WOMEN DEFAMERS.

1. The statements in this affidavit are within David Solomon's personal  
knowledge and are true and correct to the best of his knowledge.

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2. David Solomon only recently learned that the civil law violation for intentional destruction of evidence by adverse parties in prospective litigation has its criminal law counterpart in every legal code and specifically in the federal law as 18 USC 1519 and in New York State Penal Code section 215.40. In light of David Solomon learning of the companion criminal law violations for civil law intentional destruction of evidence by an adverse party in prospective litigation David Solomon requests this Court refer Amazon and Amazon head lawyer Jay Warren for felony prosecution under these laws and renews his request to compel Amazon to produce information needed to serve and depose the two women defamers.

3. Many or most states until recently as continues to be the case in New York State didn't have a separate cause of action for spoliation. But as electronic discovery has become more important in litigation now at least

two thirds of the 50 states in the United States have specifically updated their civil law to include an independent civil cause of action for spoliation.

As there is in every criminal code an independent statute for intentional destruction of evidence by an adverse party in prospective litigation the facts of this case appear to provide the Court with the ideal fact pattern to update federal and New York State law to definitively bring civil federal and civil New York State law on intentional destruction of evidence by an adverse party in prospective litigation to conform to the companion felony violation of this identical conduct in the criminal law by providing for an independent civil cause of action for spoliation in New York State law.

4. The facts and evidence in this case present this unique opportunity for this Court because the evidence in this case are the 32 emails between David Solomon and Jay Warren that in essence are David Solomon's



threats to Jay Warren of default under civil law rule 37(e) and Jay Warren's unequivocal intentional refusal to preserve Amazon in store video in knowing and intentional disregard of the repeated threats of default under rule 37(e).

5. David Solomon renews and clarifies his previous requests of this Court to compel the long overdue discovery of the information needed to serve and depose the two women defamers. David Solomon clarifies that it is irrelevant as a practical matter if the two women defamers are co-defendants or not. If against David Solomon's arguments this Court dismisses the two women defamers as co-defendants that is irrelevant to the fact that their sworn testimony is essential for this case. Moreover as their heavily redacted emails state that their travel industry jobs are probably insufficient to compensate David Solomon for the damage of their

defamation per se that means that if they are brought to justice in civil law they will almost certainly declare bankruptcy to wipe out any defamation judgment.

6. A further clarification regarding the potential dismissal of the two women defamers is that the statute of limitations law under no circumstances requires parties to be served within the statute of limitations. The statute of limitations is a time limit in which time a lawsuit must be filed. The statutory framework in every legal code then provides for an additional time of usually 120 days in which to serve the named defendants. Extensions to serve are freely granted as has been the case in this case.

7. Plaintiff wasn't able to serve the two women defamers within the time provided by the statute because (1) Jay Warren threatened David Solomon

not to file against Whole Foods because the disgusting accusations would be widely publicized nationally, (2) this caused David Solomon to delay his filing with Human Rights by at least a month or two during which time David Solomon tried without success to have David Solomon be a Joe Doe in the Human Rights proceeding, (3) these pre-filing correspondence and efforts of David Solomon caused by Jay Warren's witness tampering efforts to stop David Solomon from filing may have caused Human Rights to misplace the complaint filed with them on 8-22-17. It was not until David Solomon presented Human Rights with the U.S. Postal Service signed receipt by Human Rights of his complaint that Human Rights found his complaint, (4) Human Rights Regional Director Chungata committed the same offense against David Solomon for which David Solomon was seeking redress from Human Rights namely that Director Chungata



believed the women apparently because they are women complaining of sexual harassment against a man. For that reason Director Chungata was unwilling to provide David Solomon with the constitutional due process that required the opportunity to depose the two women. It's reasonable to conclude if Director Chungata was open to the possibility that the two women were lying that Director Chungata would have required the two women to be deposed. If the two women were deposed in the Human Rights proceeding it is very probable that this case would have been resolved in David Solomon's favor by Human Rights. The roadblock in this case is the judicial system has not compelled the sworn statements of the two women defamers, (5) With all due respect to Judge Azrack and Judge Korman it is reasonable to conclude that if Judge Azrack and Judge Korman considered that the two women may be lying that both Judge

Azrack and Judge Korman would have compelled production of the information to serve and depose the two women defamers even without discovery under rule 26 and/or compelled the long outstanding discovery demanding the information needed to serve and depose the two women defamers, (6) Defendants' improper withholding in the Human Rights and this federal proceeding of information needed to serve and depose the two women defamers under the totally inappropriate pleading of qualified privilege and (7) plaintiff's counsel Norm Pattis' inadvertent phrasing of the motion for extension to serve the two women defamers as a straight 90 day extension of time rather than the phrasing requested by David Solomon of an extension of 120 days from production by Amazon of the information needed to serve and depose the two women defamers.

8. It is unlikely this is the only time these two women defamers have



engaged in defamation against men for ulterior purposes. In support of this statement is the earlier cited famous case of Gemma Beale who made false rape complaints against at least 15 unrelated men over the course of years that resulted in trials convicting and imprisoning these men, one for over three years, or causing these men to flee the country before being served. Only when another woman who was Gemma Beale's lesbian girlfriend told the police that Gemma Beale lied to make her lesbian girlfriend jealous did the police and courts re-investigate this matter causing Gemma Beale to be jailed for over ten years for perjury and all the convicted men to be freed and exonerated. The court in sentencing Gemma Beale excused the justice system's earlier mistaken convictions of innocent men by stating that Gemma Beale is a 'convincing liar'. The two women defamers in our case alleged that David Solomon committed

criminal conduct against third party women and not the two women defamers directly. For this reason if the two women defamers are ever sworn they will be unable to name these non-existent third party women and must therefore readily admit to their lies.

9. Amazon.com, Inc. is a corporation. Corporations can be directly criminally prosecuted for felonies for the felonious acts of their authorized agents that are at least in part in furtherance of corporate objectives and are within the scope of the authority of that agent.

10. Jay Warren is the head lawyer of Amazon wholly owned subsidiary Whole Foods and his intentional decision to refuse to preserve in store video demanded by David Solomon for prospective litigation under threat of default under Federal Rules of Civil Procedure Rule 37(e) was an intentional act done at least in part in furtherance of Amazon objectives of

banning David Solomon from Amazon properties worldwide. It was within the scope of Jay Warren's authority to intentionally refuse to take appropriate steps to preserve the in store video that in the normal course of business is destroyed in forty days.

11. Both Judge Azrack and Judge Korman have not compelled plaintiff's legitimate discovery requests for the information needed to serve and depose the two women defamers whose defamation per se is the cause of this litigation. Judge Azrack ordered the personal appearance of totally innocent victim David Solomon to personally berate him after which Judge Azrack recused herself presumably for these comments. Judge Korman pleaded on behalf of the two unserved women defamers their affirmative defense which is waived if not pleaded of the defense of the statute of limitations. The reason the two women defamers have not been sworn is

wholly because both Human Rights and this Court have not compelled Amazon to produce the information needed to swear the two women defamers which is not available to plaintiff from any other source. It is irrelevant for purposes of compelling discovery of information needed to serve and depose the two women defamers that they be defendants. There is no gray area here. Amazon and Jay Warren are intentional felons. They are not convicted felons but their intentional refusal to preserve evidence demanded for prospective litigation is an intentional felony. The felony is more serious because it was done by the head lawyer of Amazon's wholly owned subsidiary. The two women defamers are malicious intentional tortfeasors. David Solomon is a totally innocent victim of Amazon, Jay Warren and the two women defamers.

12. Amazon and Jay Warren as an authorized agent of Amazon committed

a felony against David Solomon by Jay Warren's intentional refusal to preserve Amazon in store video demanded by David Solomon for prospective litigation under threat of civil default under Rule 37(e).

Incontrovertible evidence of this fact are the 32 emails exchanged between David Solomon and Jay Warren from 11-29-17 to 3-22-18 in which David Solomon demands Amazon in store video be preserved for prospective litigation and Jay Warren intentionally refuses to preserve Amazon in store video.

13. The two women defamers have escaped justice and punishment for their defamation per se. It appears they will permanently escape justice and punishment for their defamation per se. It is irrelevant whether the two women defamers are defendants for this Court to compel Amazon to produce the information plaintiff needs to serve and depose the two women



defamers.

14. This Court has pleaded the affirmative defense of the statute of limitations for the two women defamer wrongdoers. It therefore seems appropriate to respectfully request this Honorable Court to refer both Amazon and Jay Warren for felony prosecution for violation of federal and state evidence tampering statutes.

15. Plaintiff David Solomon has made a criminal complaint against Jay Warren for witness tampering for Jay Warren's threats that David Solomon should not file suit against Whole Foods. No action has been taken by the U.S. Attorney. It seems more likely Amazon and Jay Warren will not escape justice and punishment for their felony conduct if this Honorable Court rather than David Solomon refers Amazon and Jay Warren for felony prosecution of federal and state evidence tampering statutes.

16. There are separate civil and criminal companion laws that apply to the same conduct. For example in civil law there are wrongful death statutes and in criminal law there are murder statutes. David Solomon only recently learned that the civil law rule 37(e) default for intentional destruction of evidence demanded to be preserved by the adverse party in prospective litigation has its criminal law federal and criminal law state counterparts in 18 U.S.C. 1519 and New York State Penal Law Section 215.40.

Certificate of Service

I certify a copy of the foregoing was mailed on May 18, 2020 to Carmen Nicolaou, Esq, 81 Main Street, Suite 100, White Plains, New York 10601.

Oath

I affirm under penalty of perjury the foregoing statements are within my personal knowledge and are true and correct to the best of my knowledge.

Sworn and subscribed before me this 18th day of May 2020.

Submitted by: \_\_\_\_\_

*David Solomon*

David Solomon, Plaintiff 424-245-5710

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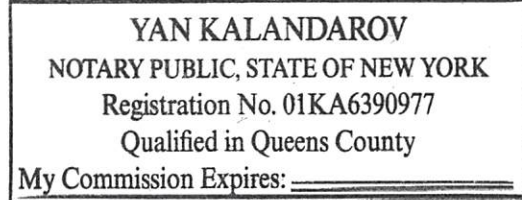
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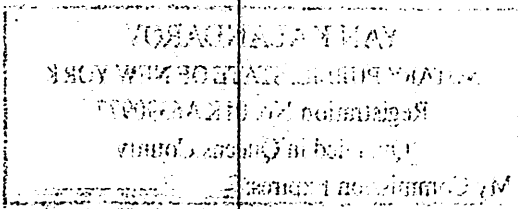
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